LIBRARY
SUPREME COURT, U. S.

FILED
1961
JAMES R. BROWNING, CLERK

No. 393

In the Supreme Court of the United States

OCTOBER TERM, 1961

ROBERT B. BAKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
HERBERT J. MILLER, Jr.,
Assistant Attorney General,
BEATRICE ROSENBERG,
BRUNO COLAPIETRO,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statutes involved	2
Statement	4
Argument	8
Conclusion	13

CITATIONS

Cases:	
Opper v. *United States*, 348 U.S. 84	9
Smith v. *United States*, 348 U.S. 147	9, 11
Statutes:	
18 U.S.C. 3486 (1952 ed.)	2, 11, 12
Act of August 20, 1954, 68 Stat. 745	2, 11, 12
Section 302(b), Labor Management Relations Act of 1947, 29 U.S.C. 186(b) (1952 ed.)	2, 4, 8
Miscellaneous:	
H. Rep. No. 2606, 83d Cong., 2d sess.	13
S. Rep. No. 153, 83d Cong., 1st sess.	12
United States Code Cong. and Adm. News, vol. 2, 83d Cong. (1954)	13

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 393

ROBERT B. BAKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is not yet reported (Pet. 1a–11a). The opinion of the district court is not reported (R. 201a–215a).

JURISDICTION

The judgment of the court of appeals was entered on July 14, 1961. A petition for rehearing was denied on August 9, 1961. The petition for a writ of certiorari was filed on September 8, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether admissions made by the petitioner before a Senate committee indicating that he was a

representative of employees were sufficiently corroborated.

2. Whether the introduction in evidence of those admissions violated 18 U.S.C. 3486.

STATUTES INVOLVED

Section 302(b) of the Labor Management Relations Act of 1947 (29 U.S.C. 186(b) (1952 ed.)) provides as follows:

> It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

Prior to its amendment by the Act of August 20, 1954, *infra*, 18 U.S.C. 3486 (1952 ed.), read as follows:

> § 3486. *Testimony before Congress; immunity.*
>
> No testimony given by a witness before either House, or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege.

The Act of August 20, 1954, 68 Stat. 745, provides as follows:

> *Be it enacted* * * *, That title 18, United States Code, section 3486, is amended to read as follows:

"§ 3486. *Compelled testimony tending to incriminate witnesses; immunity.*

"(a) In the course of any investigation relating to any interference with or endangering of * * * the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence, no witness shall be excused from testifying * * * [before any congressional committee] on the ground that the testimony or evidence required of him may tend to incriminate him * * * [if two-thirds of the committee authorize the granting of immunity and an order requiring the testimony is entered by the appropriate district court]. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding * * * against him in any court.

"(b) [Omitted; deals with notice to Attorney General before granting immunity.]

"(c) [Omitted: deals with compelling testimony and granting immunity in certain judicial proceedings.]

"(d) No witness shall be exempt under the provisions of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section."

SEC. 2. The analysis of chapter 223 of title 18, United States Code, is amended by striking

out "3486. Testimony before Congress; immunity." and inserting in lieu thereof the following:

"3486. Compelled testimony tending to incriminate witness; immunity."

STATEMENT

On April 7, 1960, petitioner was convicted in the Western District of Pennsylvania on three counts of accepting money from an employer while acting as a labor union representative, in violation of 29 U.S.C. 186(b). He was sentenced to serve one year imprisonment and to pay $400 on each of three counts, the sentences to run consecutively. The prison term imposed on count three was suspended and the petitioner placed on probation for five years.

The evidence out of which the convictions arose may be summarized as follows:

In 1957 and 1958, the Exhibitors Service Company (hereinafter referred to as Esco) located at McKees Rocks, Pennsylvania, was engaged in business as a common carrier operating between points in Pennsylvania, eastern Ohio and northern West Virginia under authorization of the Interstate Commerce Commission (R. 93a–94a).[1] During this period, George F. Callahan, Jr., was president and treasurer of Esco. Most of the company's employees were members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America ("Teamsters")

[1] "R." refers to the copy of the trial transcript which was lodged in the court of appeals below and certified to this Court by the petitioner.

and affiliated with Teamsters Locals 211, 249, 110, 926 (R. 99a).

In 1952, Esco and the above-named Teamsters Locals entered into a written contract which continued in force, with oral revisions, until 1957 (R. 100a–101a). During the month of August 1957, a jurisdictional dispute arose between Locals 211 and 249 over the question of which local's members were to be hired by Esco (R. 66a–67a). During this time, Callahan and one Theodore Cozza, president of Local 211, were negotiating for the renewal of the contract between the Teamsters and Esco (R. 103a). The negotiations broke down to such a point that Cozza refused to speak to any management officials (R. 104a-105a). On December 18, 1957, the members of Teamsters Local 211, who were in Esco's employ, went on strike (R. 69a, 77a, 102a–103a).

On December 27, 1957, while the members of Local 211 were still on strike and the jurisdictional dispute had not been settled, Edward Weinheimer, an employee of Esco, introduced Callahan to the petitioner, a labor organizer in the Central Conference of Teamsters who was responsible only to James Hoffa, the Teamsters' president, and Harold Gibbons, a vice president (R. 48a, 103a, 143a–145a). One John Armand, president of Teamsters Local 128, Taxi Drivers Union, was also present (R. 131a). The labor problems of Esco were discussed (R. 104a). The petitioner promised to do what he could to alleviate the situation and stated that he would "endeavor and arrange a meeting with Mr. Cozza" (the president of Local 211 who had refused to talk to anyone from man-

agement) (104a). Callahan and the petitioner then had a private discussion before they parted. Callahan testified that (R. 104a–105a):

> * * * naturally I was appreciative of anybody doing anything that they could to help us. So * * * I gave him a hundred dollars, and I said "This will cover your expenses for such a meeting or meetings."

The petitioner's acceptance of the money is the basis of count one of the indictment (R. 105a).

The next day, December 28, 1957, a meeting between the petitioner, Cozza and Callahan did, in fact, take place through the petitioner's efforts but no progress was made (R. 106a–107a, 69a). Several days later, Callahan, Weinheimer and the petitioner met once again at the Penn-Sheraton Hotel in Pittsburgh (R. 107a). After a discussion of approximately half an hour the petitioner and Weinheimer left to check out of the hotel. Weinheimer returned alone. Callahan gave him $50 (R. 108a–109a) which Weinheimer in turn gave to the petitioner (R. 108a, 129a). All three men reassembled in front of the hotel and Callahan handed $75.00 to the petitioner stating, "This will see you back to Detroit" (R. 109a). The petitioner's acceptance of this money and the $50.00 was the basis of count 2 (R. 109a).

Callahan saw the petitioner a third time shortly thereafter, in January 1958. Once again the labor problems were discussed (R. 109a–110a). During the course of the conversation, the petitioner stated that "things weren't as good as they might be" and that "he had been promised three hundred dollars by some

party" (R. 110a). Callahan "finally" said he would "let him [the petitioner] have it" (R. 110a). The petitioner took it, stating, "I will accept it on a loan basis." No note of indebtedness was given or asked for (R. 110a). On January 28, 1958, Esco's accountant cashed a $500 check for Callahan (R. 94a–97a). The acceptance of the $300 constitutes the offense alleged in count three.

In addition to the payments for which the petitioner was indicted, Callahan testified that he sent to the petitioner an additional total of $600 on four other occasions (R. 116a, 128a–129a) as "an act of a friend and on the basis of a loan" (R. 122a). The money was sent following telephone conversations in which the petitioner made it known to Callahan that "things weren't too good" (R. 122a). None of these payments were reflected in any note of indebtedness nor were they ever repaid (R. 123a–124a).

The petitioner did not take the stand at the trial but prior admissions made by him before a United States Senate Committee on Improper Activities in the Labor and Management Field were introduced by the government. It was shown that the petitioner had stated, concerning the Esco strike, that he "was sent in there to try and arbitrate and get the contract signed and settled" (R. 145a–146a) and that it was his "job to try and end strikes as well as organize them" (R. 148a). At the trial, James Hoffa, general president of the Teamsters and chairman of the central conference, testified that the petitioner was an organizer in the central conference whose duties were never reduced to writing (R. 34a, 47a) and who was directly respon-

sible only to Hoffa and Harold Gibbons, secretary-treasurer of the central conference (R. 48a). Hoffa denied sending the petitioner to Pittsburgh concerning the Esco labor problem (R. 50a–51a), stating that Teamsters' Local 211 was in the eastern conference,[2] not the central conference, and that the petitioner had no jurisdiction there (R. 44a). Hoffa testified, however, that he discussed the dispute with the petitioner because "it affected some part of the Central Conference" (R. 43a). He also authorized the reimbursement of expenses to the petitioner for his trips to Pittsburgh on the occasions involved herein (R. 37a–41a, 73a), stating that he (Hoffa) assumed the petitioner was on central conference business while there (R. 41a). The evidence also showed that Callahan and Weinheimer had met with Hoffa concerning the labor dispute when Hoffa was the central conference chairman (R. 115a, 30a–31a).

The defense called several local labor leaders who testified that they never authorized the petitioner to participate in any of the negotiations leading to the settlement of the labor dispute (R. 165a, 166a, 170a, 179a).

ARGUMENT

1. Petitioner asserts that, in view of his defense that he was not a "representative" within the meaning and intent of 29 U.S.C. 186(b),[3] it was error to

---

[2] The central conference is composed of states in the central part of the country including Ohio, where Esco had authority to and in fact did transport goods. The eastern conference includes most of the northeastern states including Pennsylvania, the home site of Esco (R. 28a).

[3] To establish a violation of 29 U.S.C. 186(b), the government must show: (1) that the defendant was a representative

receive in evidence admissions as to his representative status made before the Senate Committee on Improper Activities in the Labor and Management Field. He argues that his admissions against interest, made after the commission of the crime, were not properly corroborated by the government under the tests laid down in *Opper* v. *United States*, 348 U.S. 84, and *Smith* v. *United States*, 348 U.S. 147.

The *Opper* case holds that the accused's admissions which tend to prove the commission of the crime and which were uttered subsequent to the crime are in effect "confessions", and therefore must be corroborated but that (348 U.S. at p. 93):

> * * * the corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense * * *. It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt.

---

of the employees of the employer who made the payments; (2) that the employer was engaged in interstate commerce; and (3) that the defendant did accept or receive money or a thing of value from the employer (see the court's charge, R. 188a).

The trial court scrupulously followed the *Opper* decision and would not allow the admissions to be introduced in evidence until after the government had offered independent evidence of petitioner's status as a representative of employees (see R. 6a–10a, 132a–141a).[4]

The independent evidence to show petitioner's representative function consisted in part of the testimony that petitioner met with Callahan at a time when negotiations between Local 211 and Esco had broken down; that he promised to arrange a meeting between labor and management and that such a meeting did occur the very next day (see the Statement, *supra*). As the court of appeals held, "[t]his immediate acceptance of [the petitioner's] good offices by local union leadership is some indication of his representative status" (Pet. 7a). Moreover a letter sent to Teamsters headquarters in Washington confirmed that a meeting "between *representatives* of Exhibitors Service Company and this Local Union was held on Saturday, December 28 * * *" (emphasis supplied) (R. 69a, 135a–136a). In addition, there was corroboration in Hoffa's testimony that he was interested in ending the dispute and discussed the strike with the petitioner (R. 33a, 53a), who took all his orders directly from either Hoffa or Harold Gibbons (R. 34a–35a, 48a).

[4] The admissions were used only to prove one element of the offense: the representative capacity of the petitioner (R. 138a). The petitioner does not now allege that the government failed to prove the other two elements (see footnote 3, *supra*).

Although Hoffa denied sending the petitioner to Pittsburgh, Hoffa did authorize the reimbursement of expenses for the trip on the assumption that the petitioner was there on central conference business (R. 37a–41a, 49a–51a, 73a).

The above evidence corroborates the admissions made by the petitioner that he was sent to Pittsburgh to arbitrate and settle the strike (R. 145a–149a). As was held in *Smith* v. *United States*, 348 U.S. 147, 156:

> All elements of the offense must be established by independent evidence or corroborated admissions, but one available mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense "through" the statements of the accused.

2. Petitioner also argues that his admissions before the Committee could not be used against him under 18 U.S.C. 3486, as it read prior to 1954. He contends that the Act of August 20, 1954, 68 Stat. 745, amended but did not supersede that provision. Before 1954 the statute provided broadly that statements given before a Congressional committee could not later be used in criminal proceedings against the person making them. The 1954 Act limits the granting of immunity (1) to investigations "relating to any interference with or endangering of * * * the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence," and (2) to cases where testimony is compelled after the witness has claimed his privilege against

self-incrimination.[5] Clearly the petitioner's statements made in 1957 do not come within this protection.

The contention that former 18 U.S.C. 3486 is still in effect is frivolous. The Act of August 20, 1954, enacted "That title 18, United States Code, section 3486, is amended to read as follows:" and there follows a new section, complete and entire in itself, consisting of the section number, a caption and four subsections, (a) through (d). Petitioner's suggestion that the new subsections were to follow, rather than displace, the existing provision is foreclosed by the inclusion in the amended section of the section number and caption, immediately followed, with no indicated omissions, by subsection (a). That the old provision was being displaced in its entirety is confirmed by Section 2 of the amending act, which deleted the old caption (appropriate to the old provision) from the table of sections at the beginning of the chapter and substituted the new caption (appropriate only to the new provision) in its stead.[6]

---

[5] The amended provision differs from its predecessor also in that the immunity, when given, is a complete immunity against prosecution, not merely a bar against use of the particular testimony as evidence.

[6] The purpose to displace the old scheme, in which the witness was automatically immunized from the use against him of any testimony given before the committee, with a new scheme granting immunity only in certain cases, and only when the testimony is compelled after a claim of privilege, is also confirmed by the legislative history. See, *e.g.*, S. Rep. No. 153, 83d Cong., 1st Sess., p. 1:

"The important difference between the proposal embodied in S. 16 and the existing immunity statute *which it is proposed to replace* is that the present law provides, in effect, that no testimony which the witness gives may be used against him in

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
HERBERT J. MILLER, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
BRUNO COLAPIETRO,
Attorneys.

OCTOBER 1961.

---

any subsequent criminal prosecution; whereas the proposed *new* law * * * provides that the witness shall not be prosecuted on account of any transaction, matter, or thing concerning which he is compelled, pursuant to, and in accordance with the provisions of the law to testify. The proposed new law is carefully worded so that the witness would not get an 'immunity bath' *by the mere fact of testifying.*" * * * (Emphasis supplied.)

See also H. Rep. No. 2606, 83d Cong., 2d Sess., pp. 2, 8; United States Code Cong. and Adm. News, vol. 2, 83d Cong., p. 3059 (1954). The legislative history cited by petitioner (Pet. 9–10) is not to the contrary and in fact also reflects the purpose to replace the former broad provision with a more limited one.

U.S. GOVERNMENT PRINTING OFFICE: 1961